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DIVISION II

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STATE OF WASHINGTON

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Washington State Court of Appeals  
Division II

Appeal No. 470136  
On Appeal From  
GRAYS HARBOR COUNTY SUPERIOR COURT  
CAUSE NO. 14-2-00177-7  
The Honorable F. Mark McCauley

Richard J. Petersen and Karen A. Petersen  
Defendants/Appellants,

v.

Kriss Muller  
Plaintiffs/Respondents.

APPELLANTS' BRIEF

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P/m 9/30/15

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## I. ASSIGNMENT OF ERROR

1. The court erred in the misinterpretation of RCW5.60.030, The Dead Man Statute.
2. The court erred in not upholding RCW11.20.020 subsection 2, Adjudicating Testacy.
3. The court erred in which version of the evidence the judge decided to believe.
4. The court erred in misinterpreting evidence.
5. The court erred in excluding evidence.
6. The court erred in ordering Findings of Fact and Conclusions of Law and then not reviewing them.
7. The court erred in not reviewing the objections prepared for the Findings of Fact and Conclusions of Law.

## II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Whether the court erred in upholding The Dead Man Statute by not allowing the Petersens to defend themselves against accusations and then judging them without clear, cogent and convincing evidence?  
(Assignment of Error #1)
2. Whether the court erred in upholding Adjudicating Testacy as the rules were followed to prepare a self proving will the way Donald C. Muller wanted? (Assignment of Error#2)
3. Whether the court erred in which version of the evidence believed, comparing testimony of people who had been estranged from Donald C. Muller for years compared to those who saw him on a regular basis?  
(Assignment of Error#3)
4. Whether the court misinterpreted evidence regarding statements made during trial and then disregarding that testimony during ruling?  
(Assignment of Error#4)
5. Whether the court erred in excluding evidence by not allowing the accounting of the Petersen's expenses in relation to Donald C. Muller's care and farm? (Assignment of Error#5)
6. Whether the court erred in ordering Findings of Fact and Conclusions of Law and then refusing to review them and signing off on them?  
(Assignment of Error#6)

7. Whether the court erred in not reviewing the objections prepared for the Findings of Fact and Conclusions of Law, regardless of the Petersen's counsel stating there was much not supported by evidence? (Assignment of Error#7)

### **III. STATEMENT OF THE CASE**

This case is about a friendship between Donald C. Muller and our family the Petersens. From what we've read, we can't just tell our story or be the voice of Don as we would like, so we'll do our best to tell what has happened with the legal documents. RPNovember13,2014 pg.674-678.RPNovember 13,2014 pg.670 line23-25, pg.671, pg.672line1-7.

In regards to the Dead Man Statute and thus excluding evidence RPOctober 30,2014 pg.25line19-25, pg.26line1-13, November 5, 2014 pg.4line10-25, pg.5line1-6. There were several times we purchased things for Don or the farm and paid for these things on our credit card. We could not provide that evidence due to the Dead Man Statute and we were accused of not keeping an accounting of the money coming in and going out. We most certainly did but were not able to present it.

We were accused of taking money from Don that we actually gave to him as he liked to keep cash at the farm. We were not able to explain that due to the Dead Man Statute. The accounting expert could not trace it to our accounts. There were also sales to Pounder's Jewelry that the accountant could not trace to our account. November 5, 2014 pg.207-214, November 5, 2014 pg.221line15-25, November5, 2014 pg.222line1-22. Karen Petersen's mother Patricia Abbott testified that the jewelry sold at Pounder's in Spokane Washington was hers.

November 12, 2014 pg.492line16-25, pg.494line6-25, pg.495-498.

However, in Mr. Mazzeo's closing statement he states she only testified to the diamonds RPNovember 13, 2014 pg.681line4-10 and that is also in the Findings of Fact and Conclusion of Law CP at 340-341. This is a misinterpretation of evidence.

There was a lot of talk of Karen Petersen drafting legal documents and breaking the law by doing so. Karen only admitted in her testimony to downloading a template for the will and a form for the POA. RPNovember 5, 2014 pg.284line14-21, pg.285line1-2. What she couldn't talk about because of the Dead Man Statute was that the will template was on Don and Carmen's computer from when they did a will before and Don asked her to download the forms and they would complete them together. Donald did not want a lawyer involved as he felt betrayed by the last one who helped him with his mother's estate and the lawsuit his brother brought against him.RPNovember 13, 2014 pg.674line1-7. Donald C. Muller knew exactly what he wanted done with the will and it was filled out in accordance with RCW11.20.020 subsection 2 and was a self proving will. He did not want it filed with the county until after his passing and he did not want a notice in the paper. We followed his wishes.

Dr. Payal Shah who was the plaintiffs expert medical witness was a former co-worker of the plaintiffs daughter and son-in-law. RPNovember 12, 2014



pg.506line24-25, pg.507line1-4, RPNovember 7, 2014 pg.358line11-25, pg.359line17-25,pg.360line1-23. Dr. Payal Shah had never been an expert witness or received any training for being an expert witnessRPNovember 7, 2014 pg.361line6-13, pg.362line15-19, pg.363line5-23. Dr. Payal Shah was supposed to be paid for her expert testimony when the trial was over. RPNovember 7, 2014 pg.410line25, pg.411line 1-24.

We believe the court erred in which version of the evidence the judge decided to believe.

There was also a lot of discussion of Richard gambling and suggesting he was getting money from Donald to do it. Richard has a separate checking account at our credit union. Out of that account he was paying 2 car payments and a credit card payment and a line of credit that he did use sometimes for gambling but he also supplemented our regular checking account from that if we were short due to him being on unemployment. Richard's employment varies as he is a Local 46 Union member RPNovember 5,2014 pg.117line16-19, pg120line4-23, pg.121line2-13. We had supplied his work history to the plaintiffs attorney and they concentrated on the times Rick was out of work and accused him of working under the table. RPNovember 5, 2014 pg.125line10-16. The Judge decided Richard had a gambling addiction and using Donald's money for it when the expert accountant couldn't confirm Donald's money was used for

that.RPNovember 13, 2014 pg.695line21-25, pg.696line1-5, pg.699line4-7.

We believe the court erred in which version the judge decided to believe.

The judge also got upset about Richard's answer on what car he drove.

RPNovember 13, 2014 pg.697line23-25, pg.698line1-20. Richard did answer the question RPNovember 5, 2014 pg.162line2-25, pg.163line1-5. Richard is still driving the Geo Metro and it has almost 300,000 miles on it. We feel the court erred on which version the judge decided to believe.

The court ordered detailed Findings of Fact and Conclusions of Law

RPNovember 13, 2014 pg.685line12-21, pg.704line5-6. The Judge then refused to go through The Findings of Fact and Conclusions of Law.RPApril 1, 2015 pg.4line4-9, pg.10line3-8, pgs.20-21, pg.11line9-19, pg.12line8-12. The Judge also refused to read the objections from the responding counsel.RPApril 1, 2015 pg.12line24-25, pg.13line1-4, 13-17, pg.28line16-25, pg.29line1. We believe this may be a reversible error.

#### **IV.     ARGUMENT**

We believe Judge F. Mark McCauley committed an error of 'Abuse of Discretion' with the way he misinterpreted evidence and the version of evidence he chose to believe.

## **V            CONCLUSION**

Had the rules of law been properly applied, the self proving will would have been upheld. For the foregoing reasons stated, the judgment should be reversed outright. Richard and Karen Petersen should be reinstated as Personal Representatives for Donald C. Muller's estate and the final wishes of Donald C. Muller should be respected. Furthermore, Richard and Karen Petersen should be awarded the costs and attorney fees they had to incur to defend themselves and protect Donald C. Muller's estate due to the fact the case was not brought in good faith.

Alternatively, if there is a new trial, it should be held in a different court as Mr. and Mrs. Petersen do not believe they could receive a fair and impartial hearing in Grays Harbor County Superior Court.



## PROOF OF SERVICE

We certify that on the 30 day of September, 2015, we mailed, via USPS first class mail, postage prepaid, true and correct copies of this Appellant Brief, to appellee's counsel, John Stanislay and Andrew Mazzeo, to the addresses listed below:

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We swear that the foregoing is true and correct, under penalty of perjury under the laws of the State of Washington.

Signed this 30 day of September, 2015, at Chewelah, Washington:

The block contains two handwritten signatures in black ink. The first signature, on the left, is 'Richard J. Petersen' written in a cursive style. The second signature, on the right, is 'Karen A. Petersen' also in a cursive style. Both signatures are written over a horizontal line.

Richard J. Petersen pro se  
Karen A. Petersen pro se  
Appellants